

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BACKERTOP LICENSING LLC,

Plaintiff,

v.

AUGUST HOME, INC.,

Defendant.

C.A. No. 22-cv-00573-CFC

PATENT CASE

JURY TRIAL DEMANDED

**DEFENDANT AUGUST HOME, INC.'S OPPOSITION TO MOTION FOR
WITHDRAW OF JIMMY CHONG, ESQ. AS COUNSEL FOR PLAINTIFF**

Defendant August Home, Inc. opposes Mr. Chong's motion to withdraw as counsel for Plaintiff Backertop Licensing LLC because, as August Home understands the situation, Mr. Chong's withdrawal would result in Backertop potentially having no counsel in this case. Ronald Burns, Backertop's other counsel of record, has indicated his desire to withdraw from representing Backertop as well. (*See* D.I. 33.) If Mr. Burns is permitted to withdraw, and Mr. Chong is also permitted to withdraw, Backertop would be left as a corporate litigant without counsel. The Supreme Court long ago held, "It is admitted that a corporation can only appear by attorney, . . . [while] [n]atural persons may appear in Court, either by themselves, or by their attorney." *Osborn v. Bank of U.S.*, 22 U.S. 738, 830 (1824). Backertop, therefore, cannot be left without counsel.

August Home understands the Court intends to hold a hearing on this issue

(and others) before ruling on Mr. Chong's motion. (*See* D.I. 34.) "When a motion to withdraw is filed, and substitute counsel has not entered an appearance on the affected party's behalf, the decision as to whether to allow counsel to withdraw its representation is within the discretion of the Court." *Ohntrup v. Firearms Ctr., Inc.*, 802 F.2d 676, 679 (3d Cir. 1986). August Home therefore files its opposition only to note its position on the record, which is that Backertop must be represented by counsel, so if Mr. Burns and Mr. Chong wish to withdraw, they should only be allowed to do so if and once Backertop secures replacement counsel and that replacement counsel appears in the case.

Dated: May 4, 2023

FISH & RICHARDSON P.C.

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